

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1618 of 1988

To

FIRST APPEAL NO. 1627 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

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2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

STATE OF GUJARAT

Versus

ARVINDKUMAR RAYCHAND

Appearance:

Mr.M.R. Raval, AGP, for the State in F.A. Nos. 1618 to
1622 of 1988.

Mr.H.L. Jani, AGP, for the State in F.A. Nos.1623 to 1627
of 1988

Mr.G.M. Amin, Mr. Kavina for Mr. P.M.Thakker and Mr. P.S.
Champaneri for the claimants

Mr. N.S. Shevde and Mr.D.K. Nakrani with Mr. Shantilal
S. Shah for Union of India.

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 01/04/99

ORAL JUDGEMENT

(Per: Panchal, J.)

By means of filing these appeals under Section 54 of the Land Acquisition Act, 1894, read with Section 96 of the Code of Civil Procedure, 1908, the State of Gujarat challenged legality of the common judgment and award dated December 31, 1987, rendered by the learned Assistant Judge, Surendranagar, in Land Reference Cases Nos. 23 of 1984 to 32 of 1984. Land Reference Case No. 23/84 was treated as main case and the parties had led common evidence therein. The lands belonging to the respondents were placed under acquisition pursuant to publication of preliminary notification under Section 4(1) of the Land Acquisition Act, 1894, on April 7, 1977. As common questions of fact and law are involved in these appeals, we propose to dispose of them by this common judgment.

2. A proposal to acquire (1) open plots (2) common plots and (3) private roads situated at village Dudharej, Taluka : Wadhwan, District : Surendranagar, for the public purpose of 'Virangam-Okha-Porbandar Broad-guage Conversion Scheme', was received by the State Government. On scrutiny of the said proposal, the State Government was satisfied that non-agricultural lands of village Dudharej were likely to be needed for the said public purpose. Accordingly, notification under Section 4(1) of the Land Acquisition Act, 1894 ('Act' for short) was issued, which was published in the Government Gazette on April 7, 1977. The lands to be acquired were specified in the said notification. The owners, whose land were proposed to be acquired, were served with notices under Section 4 of the Act. They had filed their objections against the proposed acquisition. After considering their objections, the Land Acquisition Officer had forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that non-agricultural lands situated in the sim of village Dudharej, which were specified in the notification published under Section 4(1) of the Act were needed for the public purpose of 'Virangam-Okha-Porbandar Broad-guage Conversion Scheme'. Therefore, declaration under Section 6 of the Act was made which was published in official gazette on March 10, 1980. The interested persons were thereafter served with notices under Section

9 of the Act for determination of compensation. The claimants appeared before the Land Acquisition Officer and claimed compensation at the rate ranging between Rs.15/- per sq.mt. to Rs. 35/- per sq.mt. Having regard to the materials placed before him, the Land Acquisition Officer, by his award dated February 27, 1984, offered compensation to the claimants at the rate ranging between Rs.3.50 ps. to Rs.8.50 ps. per sq.mtr. The claimants were of the opinion that the offer of compensation made by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing requiring the Land Acquisition Officer to refer the matters to the Court for the purpose of determination of compensation. Accordingly, references were made to the District court, Surendranagar, which were numbered as Land Reference Cases Nos.23 of 1984 to 32 of 1984. In the reference applications, the claimants pleaded that the lands acquired were very valuable, and having regard to overall development, which had taken place near the acquired lands as well as potentiality of the non-agricultural lands for building purpose, they were entitled to higher compensation. The claimants by submitting reference applications prayed the Court to award compensation to them at the rate ranging between Rs. 15/- per sq.mt. to RS. 35/- per sq.mt. having regard to different qualities and nature of the lands acquired. The reference applications were contested by the present appellant vide written statement Exh.17. In the reply, it was pleaded that those claimants, who had not laid any claim in response to service of notices under Section 9 of the Act, were not entitled to any enhanced compensation. It was averred that the Land Acquisition Officer had taken into consideration all the relevant factors before making the award and therefore the reference applications should be dismissed. Upon rival assertions made by the parties, necessary issues for determination were raised by the Reference Court at Exh.18. In order to substantiate their claim advanced in the reference applications, the claimants examined (1) Shah Nikhilkumar Vadilal at Exh.22, (2) Kalyandasji Gomtidasji at Exh.34, (3) Gajendrasinh Merubha at Exh. 42, (4) Kulubha Jitsinhji at Exh.43, (5) Mathurdas Jagjivandas at Exh.44, (6) Paras Kantilal Shah at Exh.46, (7) Arvinbhai Raychandbhai at Exh.67, and (8) Ranchhodbhai Pitamberbhai at Exh.68. On behalf of the State Government, two witnesses were examined, namely, Parshottam Nagjibhai at Exh.69 and Valjibhai Dahyabhai Vaghela at Exh.73. The claimants had also produced documentary evidence in support of their claim for higher compensation. On appreciation of evidence, the Reference Court held that the compensation offered by the Land

Acquisition Officer for non-agricultural lands was inadequate. The Reference Court noticed that the lands under acquisition were very near to the northern boundary of the city of Surendranagar and huge development had taken place on the northern side of city of Surendranagar, with the result, there was high potential value of the lands under acquisition for development of the Surendranagar city. Having regard to nature of acquisition, the Reference Court was of the opinion that the lands under acquisition should be treated as a big homogeneous parcel of the plots consisting of several big and small plots of lands and there was uniform potential value with respect to non-agricultural lands under acquisition. In view of the overall development which had taken place near the acquired lands, the Reference Court deduced that it was not necessary to resort to belting method while ascertaining the market value of the acquired lands. It was further held by the Reference Court that the claimants were entitled to same amount of compensation as may be determined for non-agricultural lands, for common plots and roads also. After taking into consideration documentary evidence produced by the parties, the Reference Court held that sale instances produced by the claimants in respect of Survey Nos. 618, Plot No.24 of Survey no.719, survey no.791 of which old number was 663, 604, part of survey no.791, survey nos. 606, 719, 583, 584, 1220, 581 and 580 were relevant as well as comparable for the purpose of ascertaining the market value of the acquired lands. In ultimate decision, the Reference Court has held that the claimants are entitled to compensation at the rate of Rs.13/- per sq.mtr. by the impugned common award, which has given rise to the present appeals. We may state that the Reference Court has also awarded additional amount of compensation as envisaged under section 23(1-A) of the Act as well as interest on solatium payable to the claimants under section 23(2) of the Act.

3. The learned Government Counsel submitted that the sale instances referred to by the claimants were not proved at all as required by law and, therefore, the same could not have been made basis by the Reference Court for ascertaining market value of the acquired lands. It was pleaded that development in the nearby area had taken place after the acquisition of the lands in the present case and, therefore, the said development could not have been relied on for the purpose of determining market value of the acquired lands. The learned Counsel for the appellant vehemently submitted that there cannot be uniform potential value of the lands acquired and, therefore, uniform determination of market value for

non-agricultural lands made by the Reference Court should be set aside. It was claimed that the sale instances referred to by the witnesses of the State Government ought to have been relied upon for the purpose of determining market value of the acquired lands. What was stressed was that the possession of the acquired lands was taken on October 7, 1977 and, therefore, direction to pay additional amount of compensation as envisaged from publication of notification under section 4(1) of the Act till the date of award should not have been given by the Reference Court. The learned Counsel for the appellant further contended that the direction to pay interest on amount payable to the claimants under sections 23(1-A) & 23(2) of the Act should not have been given in view of the judgment of the Supreme Court rendered in the case of State of Maharashtra Vs. Maharau Srawan Hatkar, Judgment Today, 1995(2) S.C. 583 and, therefore, those directions should be set aside. It was claimed that having regard to the nature of acquisition, belting method ought to have been adopted and uniform potential value should not have been determined for all the acquired lands. What was stressed was that no cogent evidence was led by the claimants to establish that they were entitled to compensation at the rate of Rs.13/- per sq.mtr and, therefore, the impugned common award should be set aside.

4. M/s. G.M. Amin, Percy Kavina for Mr. P.M.Thakker and Mr. P.S. Champaneri, learned Counsel appearing for the claimants submitted that the sale deed relating to Survey No.580 of village Dudharej was proved by witness Mathurbhai Jagjivandas examined at Exh.44 and, therefore, the amount of compensation payable to the claimants should be determined on the basis of sale of said survey number. What was stressed by the learned Counsel for the claimants was that determination of compensation by the Reference Court was not on higher side and, therefore, the appeals filed by the State Government should be dismissed.

5. We have heard the learned counsel for the parties at length and we have also gone through the record of the case. Normally, methods of valuation are: (1) opinion of experts: (2) the prices paid within a reasonable time in bona fide transactions of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages: and (3) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. In this case, the Reference Court has referred to sale instances for the purpose of ascertaining market value of the acquired lands. Those sale instances are tabulated in Para-28 of

the judgment. However, the sale instances in respect of Survey Nos. 618, plot no.24 of survey no.719, survey nos. 791, 604, 606, 719, 583, 584, 1220 and 581 are not proved at all and, therefore, those sale instances could not have been taken into consideration by the Reference Court for the purpose of ascertaining the market value of the acquired lands. The best evidence of value of property is sale transaction in respect of acquired lands and in absence of such sale transactions, deeds relating to neighbouring lands in the vicinity of acquired lands can be taken into consideration. When the sale deed relating to the neighbouring land in the vicinity of acquired lands are relied upon, the features which are required to be presented before the Court are; (i) the transactions must be within a reasonable time of the date of notification, (ii) the transactions must be bonafide transaction, (iii) the transactions should be relating to lands similar to the lands acquired, and (iv) they should relate to the lands possessing similar advantageous features. These are relevant features to be taken into consideration to prove the market value of the acquired lands as on the date of publication of notification under section 4(1) of the Act. These relevant features could have been established by examining either the vendor or the vendee and if they are not available, by examining the scribe of the documents by which survey nos. 618, plot no.24 of survey nos. 719, 791, 604, 606, 719, 583, 584, 1220 and 581 of village Dudharej were sold. Under the circumstances, sale transactions relating to the above referred to survey numbers could not have been relied upon by the Reference Court while ascertaining market value of the acquired lands on the relevant dates. The Supreme Court in the case of State of Gujarat & Ors. vs. Rama Rana & Ors. 1997(3) G.L.R. 1954, has ruled that the Court has statutory duty to the society to subject evidence on record to a great scrutiny and to award a just compensation to the claimants in cases of compulsory acquisition of lands. If the evidence led by the claimants is minutely examined, it becomes evident that sale transaction relating to survey no.580 of village Dudharej is proved by them. Witness Mathurbhai Jagjivandas, who is examined at Exh.44 has stated in his evidence that he had sold survey no. 580 to Mehta Lalitkumar Manilal by deed dated August 17, 1966. He produced a simple copy of sale deed at Mark 45/1. As simple copy of the sale deed was produced, the same was not exhibited by the Reference Court. However, learned Counsel for the appellant as well as learned Counsel for the acquiring authorities have made an endorsement on the document that the same be exhibited and contents thereof be read in evidence. In view of the endorsement made on

the simple copy of the sale deed produced at Mark 35/1, the same is ordered to be exhibited and given exhibit No.78. As Mark 45/1 is admitted by the either sides, the same is read into evidence in view of the provisions of section 58 of the Indian Evidence Act, 1872. Exh.78 indicates that land admeasuring 148 sq.mts. was sold by Mathurbhai Jagjivandas to Mehta Lalitkumar Manilal for a consideration of Rs. 1851/- by deed dated August 17, 1966. It means that the market value of the land sold was Rs. 12.50 ps. per sq.mt. as on August 17, 1966. In the present case, notification under section 4(1) of the Act was published on April 7, 1977 and, therefore, if reasonable rise in price of the land is considered, we are of the view that market value of survey no.580 as on the date of publication of notification under section 4(1) of the Act would not have been less than Rs.26/- per sq. mt. The Supreme Court in the case of Land Acquisition Officer, Revenue Divisional Officer, Chittor vs. L. Kamalamma (SMT) Dead by LRS and others, (1998) 2 Supreme Court Cases 385 has ruled that when no sales of comparable lands were available where large chunks of land had been sold, even the transactions in respect of smaller extent of land could be taken note of as indicating the price that it may fetch in respect of large tracts of land by making appropriate deductions such as for development of the land by providing enough space for roads, sewers, drains, layout etc. Having regard to the facts of the case, we are of the opinion that though land sold by deed dated August 17, 1966 was small in comparison to large tract of lands acquired, the same can be advantageously referred to for ascertaining market value of the acquired lands after making appropriate deduction. If 50% is deducted from the price of survey no. 580 as determined on the relevant date, we are of the view that market value of the acquired lands can be assessed at Rs. 13/- per sq.mt. on the relevant date. We accordingly hold that the Reference Court was justified in holding that the market value of the acquired lands as on the relevant date was Rs. 13/- per sq.mt. and the said finding is hereby upheld. We may incidentally mention that agricultural and non-agricultural lands of village Dudharej were acquired by State Government for the same public purpose pursuant to publication of preliminary notifications under section 4(1) of the Act on June 28, 1973. In those cases also, references were sought and the Reference Court had awarded compensation to the claimants at the rate of Rs. 12/- per sq.mt. for non-agricultural lands and at the rate of Rs. 9/- per sq.mt. for agricultural lands. In First Appeal No. 1555/88 and others, High Court vide judgment dated March 23, 1999 has upheld the award of the

Reference Court awarding compensation to the claimants at the rate of Rs. 12/- per sq.mt. for non-agricultural lands. In view of that judgment also, it cannot be said that the compensation awarded by the Reference Court in the present case to the claimants is in any manner excessive so as to warrant interference of the Court in the present appeals. We may state that in the earlier cases, market value was determined with reference to publication of notification under section 4(1) of the Act on June 28, 1973; whereas in the present case, notification under section 4(1) of the Act was published on April 7, 1977 and, therefore, we do not find that determination of compensation is excessive in any manner at all.

6. The submission that belting method ought to have been adopted has no substance and deserves to be rejected. We may state that before the acquisition proceedings were initiated, there was an over all development near the acquired lands and several structures had come up adjacent to the acquired lands. The evidence of witnesses examined by the claimants indicates that the development in the area had started since 1954 and there was pressure on the lands in Surendranagar town. It is not brought to the notice of the Court that the lands acquired were abutting on any National Highway or State Highway, though some of the lands acquired were near to the State Highway. So far as the belting method is concerned, the Supreme Court in *Land Acquisition Officer, Revenue Divisional Officer, Chittor v. L.Kamalamma (Smt.) Dead by Lrs.and others*, [(1998) 2 Supreme Court Cases 385] has laid down as under:

"When a land is acquired which has the potentiality of being developed into an urban land, merely because some portion of it abuts the main road, higher rate of compensation should be paid while in respect of the lands on the interior side it should be at lower rate may not stand to reason because when sites are formed those abutting the main road may have its advantages as well as disadvantages, Many a discerning customer may prefer to stay in the interior and far away from the main road and may be willing to pay a reasonably higher price for that site. One cannot rely on the mere possibility so as to indulge in a meticulous exercise of classification of the land as was done by the Land Acquisition Officer when the entire land was acquired in one block and

therefore classification of the same into different categories does not stand to reason."

In view of the abovereferred to principles laid down by the Supreme Court, we are of the opinion that it was not necessary to resort to belting method while determining amount of compensation payable to the claimants. The facts of the case establish that possession of the acquired lands was taken on October 7, 1977 and, therefore, the Reference Court should not have directed the appellant to pay additional amount of compensation envisaged under section 23(1-A) of the Act from the date of publication of notification under section 4(1) of the Act till the date of award. We hold that the claimants would be entitled to additional amount of compensation as envisaged under section 23(1-A) of the Act from April 7, 1977 to October 7, 1977 which is the date on which possession of the acquired lands was taken. Moreover, direction to pay interest on the amount payable under section 23(1-A) as well as on the amount payable under section 23(2) of the Act could not have been given in view of the decision of the Supreme Court rendered in the case of State of Maharashtra v. Maharau Srawan Hatkar, Judgment Today, 1995(2) S.C. 583. Therefore, the said direction will have to be set aside.

For the foregoing reasons, all the appeals filed by the appellant are partly allowed. It is held that the market value of the acquired lands on the relevant date was Rs.13.00 per sq.mtr. The claimants would be entitled to additional amount of compensation envisaged under section 23(1-A) of the Act from April 7, 1977 which is the date of publication of notification under section 4(1) of the Act to October 7, 1977 which is the date on which possession of the acquired lands was taken. The claimants will not be entitled to interest on the amount envisaged under section 23(1-A) of the Act as well as on the amount payable to them under section 23(2) of the Act. Rest of the directions given by the Reference Court with regard to payment of solatium, interest under section 34 of the Act etc. are not disturbed and are hereby upheld. There shall be no order as to costs. Office is directed to draw decree in terms of this judgment.

(patel)